

PTO/SB/26 (05-03)

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**TERMINAL DISCLAIMER TO OBTAIN A DOUBLE PATENTING
REJECTION OVER A PRIOR PATENT**Docket Number (Optional)
V112-US

In re Application of: CLARK et al

Application No.: 10/056,958

Filed: 10/22/2001

For: EVACUATED HYBRID OVENIZED OSCILLATOR
Delaware Capital Formation,

The owner, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 5,917,272. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

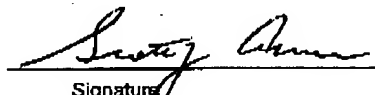
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record.

 Sept 25, 2003
Signature Date

Scott J. Asmus, Reg. No. 42.269

Typed or printed name

603-886-6100

Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Appl. No. 10/056,958
Amdt. Dated Sept. 25, 2003
Reply to Office Action of 07/25/2003

Terminal Disclaimer for Non-Statutory Double Patenting

The Office rejects claims 1-10, 12-14, 21 and 22 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent 5,917,272 in view of IEEE Frequency Control Symposium, 1996.

The Office issued a Double Patenting rejection, and Applicant encloses herein a statutory terminal disclaimer (Form PTO/SB/26) and statement under 37 CFR 3.73(b) to advance processing and obviate the rejection based on non-statutory double patenting. The issued patent and the above-referenced application share common ownership.

It should be understood the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is **not** an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

Thus, a rejection based on a nonstatutory type of double patenting is obviated by filing a terminal disclaimer in the application or proceeding in which the rejection is made. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Knohl*, 386 F.2d 476, 155 USPQ 586 (CCPA 1967); and *In re Griswold*, 365 F.2d 834, 150 USPQ 804 (CCPA 1966). Applicant agrees to a terminal disclaimer to advance processing of the present application, and it is not an admission of the propriety or merits of the rejection. Applicant respectfully request acceptance of the enclosed terminal disclaimer and allowance of claims 1-10, 12-14, 21 and 22.

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Telephone Interview

As this is an After Final (AF) response, Applicant request that the Office contact the undersigned for a telephone interview if less than all the claims are allowed in order for the Applicant to review any remaining objection or rejection in order to expedite processing and advance the present application into condition for allowance.

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,



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